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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA
FIFTH APPELLATE DISTRICT**

In re JOSHUA W., a Person Coming Under
the Juvenile Court Law.

MADERA COUNTY DEPARTMENT OF
SOCIAL SERVICES/CHILD WELFARE
SERVICES,

Plaintiff and Respondent,

v.

NICOLE G.,

Defendant and Appellant.

F049868

(Super. Ct. No. BJP014804)

OPINION

THE COURT*

APPEAL from a judgment of the Superior Court of Madera County. Thomas L. Bender, Judge.

Candace S. Heidelberger, under appointment by the Court of Appeal, for Defendant and Appellant.

David A. Prentice, County Counsel, and Miranda P. Neal, Deputy County Counsel, for Plaintiff and Respondent.

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*Before Cornell, Acting P.J., Hill, J., and Kane, J.

On appeal from an order terminating her parental rights (Welf. & Inst. Code, § 366.26) to her son Joshua, appellant Nicole G. argued both respondent Madera County Department of Public Welfare (the department) and the Madera County Superior Court failed to comply with the notice requirements of the Indian Child Welfare Act (ICWA; 25 U.S.C. § 1901 et seq.).¹ At the outset of the underlying proceedings, appellant reported Joshua had Cherokee heritage out of Tulsa, Oklahoma and a tribal registration process had started.

Nonetheless, the department apparently made little effort to comply with ICWA notice requirements. (25 U.S.C. § 1913.) It sent notice only to the Bureau of Indian Affairs (BIA) and did so without any reference to appellant's claim of Cherokee heritage, let alone identifying heritage information then available to the department. (*In re Gerardo A.* (2004) 119 Cal.App.4th 988.) Neither did the department file proof that the BIA ever received the notice the department sent. (*In re H.A.* (2002) 103 Cal.App.4th 1206.) Finally, in its report prepared for the section 366.26 hearing and notwithstanding appellant's earlier statements, the department misrepresented it had not been provided with any information suggesting Joshua might have Indian ancestry.

On review, the department concedes its lack of proper ICWA notice was prejudicial error and requests a limited remand to properly settle the question of whether Joshua should be considered an Indian child pursuant to ICWA. We have solicited the opinions of Joshua's court-appointed trial counsel/guardian ad litem, who represented him up through the termination hearing, as well as his current court-appointed attorney/guardian ad litem. Both have now replied and concur that it would be in Joshua's best interests to conduct a limited remand as to ICWA compliance only.

¹ All statutory references are to the Welfare and Institutions Code unless otherwise indicated.

Having reviewed the record and considered the parties' positions, this court concludes the ICWA notice violations require reversal of the order terminating parental rights and a limited remand (see *In re Francisco W.* (2006) 139 Cal.App.4th 695), as set forth below.

DISPOSITION

The order terminating parental rights is reversed. The matter is remanded to the trial court with directions to assure that the department gives notice of the underlying proceedings and any upcoming hearing(s) in compliance with ICWA to the BIA and each of the federally-recognized Cherokee tribes. (25 U.S.C. § 1913.) Respondent shall document its efforts to provide such notice by filing such documentation and any and all responses received with the trial court. (See *In re H.A. supra*, 103 Cal.App.4th at pp. 1214-1215.)² If the BIA or any tribe responds by confirming that the child is or may be eligible for membership within 60 days of sending proper notice under the ICWA to the BIA and any identified tribes (Cal. Rules of Court, rule 1439(f)(6)), the court shall proceed pursuant to the terms of the ICWA and is hereby authorized to vacate, in whole or in part, any prior finding or order which is inconsistent with ICWA requirements. If there is no confirmation that the child is or may be eligible for Indian tribal membership, the court may proceed accordingly.

² The notice form mentioned in our *In re H.A., supra*, opinion has been superseded with a new form promulgated by the California Judicial Council (JV-135).